



Comptroller General  
of the United States

517106

Washington, D.C. 20543

## Decision

**Matter of:** Mariah Associates, Inc.--Entitlement to Costs

**File:** B-254754.3

**Date:** June 8, 1994

G. Henry Seaks, Esq., Wells, Love & Scoby, for the protester.

Robert C. Arsenoff, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Request for declaration of entitlement to costs is denied where General Accounting Office has no legal basis for awarding costs.

### DECISION

Mariah Associates, Inc. requests that we declare it entitled to proposal preparation and bid protest costs in conjunction with its protest, B-254754, against the award of a contract to SWCA, Inc. under request for proposals (RFP) No. 1425-3-SP-40-14010, issued by the Department of the Interior. The protester alleged that proposals had been misevaluated; on the date scheduled for submission of the agency report, October 12, 1993, Interior took corrective action by amending the solicitation and requesting a second round of best and final offers (BAFO).<sup>1</sup> We dismissed the protest as academic on October 15.

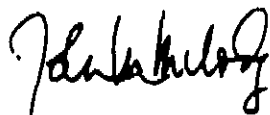
On November 30, Mariah was notified that award had been made to SWCA, Inc. as a result of its second BAFO which offered a substantially lower price than the protester's BAFO. Mariah was also informed that SWCA had received a higher technical score than the protester. Mariah claims that it is entitled to proposal preparation costs for its second BAFO as well as the costs of filing and pursuing its protest, because it was effectively misled into continuing to participate in the competition and continuing to pursue its protest insofar as the agency did not disclose the relative technical scoring of proposals prior to the second round of BAFOs. Mariah asserts that, had this information been timely disclosed,

<sup>1</sup>BAFOs were solicited for amended prices only.

the protester would not have prepared a second BAFO and would not have pursued its protest further.

There are two circumstances under which we may declare a protester entitled to costs. First, protest and proposal preparation costs may be awarded if this Office determines that a solicitation, proposed award, or award does not comply with statute or regulation. 4 C.F.R. § 21.6(d) (1994). Second, protest costs may be awarded where an agency unduly delays taking corrective action in the face of a clearly meritorious protest. 4 C.F.R. § 21.6(e); PLX, Inc.--Request for Declaration of Entitlement to Costs, B-251575.2, Mar. 10, 1993, 93-1 CPD ¶ 224. Neither circumstance is present here. Our October 15 decision dismissing Mariah's protest does not contain a determination that the agency violated any regulation or statute, and since Interior took corrective action on the day that its report was due, the agency did not unduly delay in taking corrective action. See Id.

Accordingly, the request for a declaration of entitlement to costs is denied.



for Robert P. Murphy  
Acting General Counsel